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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD

Written statement submitted by the American Association of Jurists, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council Resolution 1996/31.

[27 December 1998]

GE.99-10472 (EXT)

Need for an objective assessment of the state of human rights in the world

1. The importance of the Pinochet episode, especially the Lords' first decision, by three votes to two, to deny the former dictator immunity has been blown out of proportion and perceived, even among the upper echelons of the United Nations, as a qualitative change in the struggle to prevent human rights violations from going unpunished. The democratic countries are seen as having made a quantum leap and no dictator or former dictator would ever again feel secure. This version of the Pinochet case (apart from the tribulations of Pinochet himself - at the time of writing he is awaiting a further pronouncement by the Lords, following the annulment, this time unanimous, of its now famous judgement) is anything but an objective perception of the issue of human rights on a world scale.

2. The Lords' decision to deny Pinochet personal immunity (as opposed to that of a chief of State, which the former dictator is not) simply recognizes the principle, enshrined in article 7 of the Universal Declaration of Human Rights and in many national constitutions, that all persons are equal before the law, and constitutes an attempt to rise above anachronistic English law that recognizes personal privileges such as sovereign immunity. Moreover, the basis for the annulment of the Lords' first decision is legally unsustainable: Lord Hoffman's distant links with Amnesty International, which is not a party to the case, is no motive for recusal (which must be founded on some specific reason, such as private interest in the case, kinship or close friendship with, or personal enmity for, one of the parties) and the recusal must be submitted within the proper time frame and, in any event, prior to the judgement. It was a political decision to annul the Lords' original judgement, not a legal one.

3. A dividing line has been drawn between democratic countries on the one side, and dictatorships on the other, whereas no such division exists in human rights. The "world's foremost democracy" played a decisive role in the particular case of the installation of a dictatorship in Chile. The decision to opt for the coup d'état when faced with the failure of the method hitherto employed by the CIA and the International Telephone and Telegraph (ITT) company - that of lending financial support to rightist politicians in an effort to subvert the victory of a leftist coalition Government - was taken in Washington, as attested to by CIA cables 236 and 240 of 21 September 1970 to its agency in Santiago, Chile: "the purpose is military and neither the State Department nor the embassy in Santiago must be seen to be involved". "Committee 40", chaired by Henry Kissinger, President Nixon's adviser, decided on the military option after Salvador Allende's electoral victory with a relative majority on 4 December 1970 and before the Chilean Congress had voted to confirm him as President on 24 October of that year. As General René Schneider, Commander-in-Chief of the Chilean army, who respected democratic legality, stood in the way, he was assassinated on 23 October 1970, one day before the Chilean Congress voted Allende in as President. The day before the assassination, 22 October, Colonel Paul Wimert, the military attaché at the United States Embassy, had passed weapons and US$ 50,000 to the assassins.

4. The Pinochet case could really only be seen as opening a new phase in the struggle against impunity if sitting next to him in the dock were his instigators and accomplices: Henry Kissinger, Nixon's adviser and Chairman of

"Committee 40"; Edward Korry, the then Ambassador to Chile; Colonel Paul Wimert, military attaché; Henry Hecksher, at the time CIA director in Chile; John A. McCone, former member of the CIA and member of the ITT board in 1970; Richard Helms, the CIA Director, and William V. Broe, director of clandestine operations in Latin America, and so on and so forth.

5. But the case of Chile is not exceptional: promotion of coups, sabotage and support for dictatorships are a constant of United States foreign policy, as is armed aggression. In the past 45 years alone there have been the cases of Guatemala in 1954 (intervention financed by United Fruit, now "Chiquita"); Cuba (Bay of Pigs) in 1961; the 1954 coup d'état in Brazil; the 1983 Grenada invasion; the mining of the port of Corinto and support to the "contras" in Nicaragua during the Sandinista administration (a United States intervention condemned by the International Court of Justice in 1986: case of Nicaragua vs. United States of America); the invasion of Panama in 1989 (the Panamanian victims' petition has been admitted by the Inter-American Commission on Human Rights and is now pending, case N° 10573).

6. Support to dictatorships, armed aggression, human rights violations and international terrorism are also a constant of world policy , not only of the United States, but of other powers as well, sometimes even under the banner of the United Nations: the Gulf War (20,000 civilian victims, destruction of virtually all civil infrastructure, Iraqi soldiers buried alive with bulldozers, etc.); operation " Restore Hope " in Somalia (indiscriminate bombardment of Mogadishu which caused many civilian casualties, including members of international humanitarian organizations); French responsibility in the genocide in Rwanda; the bombing and destruction of a pharmaceutical factory in Sudan on 20 August 1998, a decision taken on the basis of "false or incomplete" information on 14 August by President Clinton and a group of six advisers; the Anglo-US "blitzkrieg" on Iraq in December 1994, (reducing the Geneva Conventions, the Universal Declaration of Human Rights and the Charter of the United Nations to so much scrap paper); Great Britain's violation of the Geneva Conventions in the Falklands war (to this day no explanation of the fate of Argentine soldiers who disappeared in that war has been proffered). Not to mention, in this last case, the criminal liability of the military dictatorship in Argentina which sent young conscripts ill-prepared for war and ill-equipped for the cold to fight in the Falklands. The Argentine military leaders used the "Clinton method", whereby an international conflict is unleashed to counteract the deterioration of its domestic political situation. The murders of Spanish residents in France, ordered by Spanish officials, is the only case that has gone to trial, with the sentencing of the two former senior officials responsible (although a pardon is being actively sought for them).

7. Saddam Hussein was largely financed by the United States of America during the Iran-Iraq war, through the Atlanta branch of Italy's Banca Nazionale del Lavoro. The trial for illicit financing for Saddam Hussein, which might have exposed government responsibility, was conveniently curtailed through a plea bargain with the accused, the bank's branch office manager, who was the scapegoat. The arrangement was announced by the United States Justice Department on 2 September 1993. This prevented Bush, Baker and Eagleburger, among others, from being subpoenaed to testify. The list of dictators promoted or supported by the super-powers on various continents and on different occasions goes on an on and stretches right into the present.

8. However, the major powers are not only "exporters" of large-scale human rights violations, they are also "consumers" on their own territories: in the United States there are millions of foreigners who, because their expulsion orders could not be implemented (they were expelled for minor offences or because they were illegal immigrants) live hidden away in quasi-concentration camps, deprived of all rights: they are virtually non-existent because, having been expelled, juridically they "are not present" in the United States. The death penalty, even for those who committed crimes as minors, is still regularly enforced. Given the frequency with which the French police (usually with impunity) kill young Maghrebs suspected of minor offences, the death penalty could be said to exist in the guise of an "unfortunate accident".

9. Western Europe has declared war on illegal immigrants, who are refused entry at borders or expelled *en masse* by the most brutal methods, including murder: Semira Adamu, a 20-year-old Nigerian woman, was smothered to death with a cushion by Belgian police on board an aeroplane in Brussels while resisting repatriation. Todor Bogdanovic, an eight-month-old Rom baby from Serbia, was shot dead on 20 August 1995 by a French border policeman who opened fire on his parents' car as they attempted to enter France from Italy. Torture and ill-treatment of prisoners are an everyday occurrence in all developed countries.

10. The American Association of Jurists has repeatedly voiced its concern that these "transnational" or globalized characteristics of human rights violations are not reflected in various drafts prepared at the United Nations, especially that concerning impunity, in the draft Optional Protocol to the International Covenant on Economic, Social and Cultural Rights or in the draft concerning reparation to victims. It is also concerned that the statute of an international criminal court approved in Rome provides for the trial of persons who violate human rights on the "periphery", as long as the major powers agree, but not for the trial of those responsible for the developed countries' domestic violations.

11. Objectivity needs to be restored to the assessment of the human rights situation "in any part of the world", to cite the title of this Commission on Human Rights agenda item, and appropriate action must be taken to achieve real progress regarding respect for, and promotion of, human rights.